IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2006

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THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

Writ Petition Nos.11277, 11278 & 12238 of 1998
and
WPMP. Nos.18589 & 18590 of 2006

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N.Tamil Selvi ..Petitioner in
WP Nos.11277 & 12238 of 1998

K.S.N.Company,
represented by its Proprietor
A.G.Gopal ..Petitioner in
WP Nos.12238 of 1998

Vs

1. The State of Tamilnadu,
rep. by
The Secretary to Government,
Industries Department,
Fort St. George,
Madras 600 009.

2. The District Collector,
Madurai District,
Madurai.

3. The Asst. Director of Geology and Mining,
Madurai. ..Respondents in all the W.Ps.

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Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus calling for the proceedings of the first respondent pertaining to G.O. (D) Nos.181 and 193 Industries (MMB1) Department dated 16.06.1998 and 22.06.1998 and quash the same and direct the respondents not to interfere with the petitioner's right to quarry and transport mineral on payment of necessary seigniorage fee from the quarry lands measuring 1.50 acres, comprised in survey No.84/1 situated in Sakkarappanaickanur village, Usilampatti taluk, Madurai District, till the expiry of the lease period. Writ Petition No.12238 of 1998 is filed for issuance of writ of certiorari calling for the records of the second respondent's notice bearing Roc.

No.Mines/1043/98 dated 29.07.1998 and quash the same.

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For Petitioner : Mr.Ramakrishna Reddy

For Respondents : Mr.R.Thirugnanam, Spl. Govt. Pleader
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ORDER

Writ petitions No.11277 and 11278 of 1998 were disposed off by this Court on 07.08.1996, in the absence of the counsel for the petitioners and upon hearing the learned Government Pleader, who submitted that the lease period granted in favour of the petitioners has already expired, the correctness of the G.O.(D) No.181 Industries (MMB1) dated 16.06.1998 and G.O. (D) No.193 Industries (MMB1) dated 22.06.1998 cancelling the lease granted in favour of the respective petitioners, was not gone into.

2. Now, the petitioners have filed two miscellaneous petitions in WPMPs. Nos.188589 and 18590 of 2006 seeking to set aside that order and restore the writ petitions to file and consider them on merits on the premise that even-though the period of lease is over, the correctness of the cancellation has to be decided on merits, as a show cause notice has been issued to the petitioner which is the subject matter of writ petition No.11277 of 1998, consequent to the cancellation order, proposing to impose more than crores of rupees as penalty on the ground of illicit mining. Learned counsel also submits his explanation and excuse in the affidavit filed in support of the miscellaneous petitions, for his absence on the date when the writ petitions were disposed off.

3. Having regard to the fact that the order dated 07.08.2006 has not been passed on merits and its dismissal would definitely have a bearing on the other writ petition in WP. No.12238 of 1998, which has been filed challenging the show cause notice by which it was proposed to levy huge penalty in crores of rupees, this Court is of the view that the order dated 07.08.2006 should be recalled and the matter has to be heard on merits and accordingly, the order dated 07.08.2006 is recalled and the writ petitions are restored to file.

4. The facts in these writ petitions are identical in nature. The petitioners were granted quarrying lease for quarrying granite for a period of ten years under G.O. (D).Nos.169 and 107 Industries (MMB1) Department dated 08.06.1995 and 02.05.1995. Necessary lease deeds were executed on 28.07.1995 and registered on that date. In the lease deed, the lease period has been stated as from 28.07.1995 to 27.07.2005. It is the case of the petitioner in writ petition No.11277 of 1998 that the petitioner, on obtaining lease and after getting it registered, duly entered into a raising contract with M/s. KMB Granites on 04.07.1997 and thereupon they are carrying on the quarrying operations. While that being so, the petitioner in writ petition No.11277 of 1998 was served with the show cause notice dated 29.07.1998 as if the petitioner allowed the K.M.B. Minerals to quarry granite illicitly. It appears that the show cause notice was alleged to have been issued on the basis that the lease granted in favour of the petitioner was cancelled by G.O. (D) No.181 dated 16.06.1998. The correctness of the issuance of show cause notice is put in issue by way of writ petition No.12238 of 1998 on the ground that the petitioner has not been given an opportunity of the alleged irregularity which formed the basis of the cancellation of the lease granted in favour of the petitioner. All actions are pre-determined action by the Assistant Director of Geology and Mining. The reason given are

totally against the facts. On the contrary, the learned Special Government Pleader appearing for the respondent argued for sustaining the impugned order. He also placed the relevant files before this Court.

5. Heard the learned counsel on either side and perused the materials available on record including the files produced by the Special Government Pleader.

6. On going through the files, this court is forced to come to a conclusion that all was not well with the respondents and the action taken to cancel the lease of the petitioners by stating one reason or the other, which is manifest from the notice dated 09.10.1996, which is issued within one year from the grant of lease calling upon the petitioner to explain as to why the lease granted in his favour should not be cancelled as he has not started quarrying work. As per the statutory provision, if the quarry has not been operated upon within a period of two years, only then, such a notice could be issued. The hastiness with which the notice has been issued on 09.10.2006 even before the expiry of the statutory period for cancellation of the lease would itself prove the pre-determination with which notice has been issued. The other reasons given for cancellation of the lease granted in favour of the petitioner was that the Assistant Director of Geology and Mining inspected the subject quarry and made a report dated 28.10.1997 that the quarry has not been operated. The inspection report is bereft of many particulars as to when the Assistant Director of Geology and Mining has inspected the quarry site. However, the report bears the date as 28.10.1997. It is contended by the learned Government Pleader that it has to be presumed that the Assistant Director of Geology and Mining has inspected the quarry site on the date of the letter/report, i.e., on 28.10.1997. Even then, there are three telegrams found place in the files at pages 103, 107 and 109 from Madurai Collectorate sent by the very same Assistant Director of Geology and Mining on 28.10.1997 and the quarry site at Usilampatti is more than 150 kms away from Madurai. The Assistant Director of Geology and Mining cannot be a person to be present at Usilampatti and in Madurai at the same time and date. That falsifies the inspection report. Above all, in the impugned order, G.O. (D) No.181, it is stated that a show cause notice was issued for non commencement of the quarry work and reply given by the lessee was not accepted. As seen from the records, there is no material available that such a show cause notice has been issued on the lessee and it is further admitted fact that the lessee has not even given any reply to the so called show cause notice.

7. When that be the factual position, this Court is not able to find any reason to sustain the impugned orders cancelling the lease granted in favour of the petitioner for the alleged reason of non operation of the quarry within a period of two years. Hence, the cancellation orders and the consequential show cause notice are set aside and the matter is remitted back to the authorities to reconsider the issue by following the provisions and by giving the petitioners a due opportunity of issuance of show cause notice and on getting a reply and supplying the materials which formed the basis for the issue of show cause notice, proceed further in accordance with the provisions. The writ petitions are allowed. No costs.

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To

1. The Secretary to Government,
Governmentof Tamilnadu,
Industries Department,

Fort St. George,
Madras 600 009.

2. The District Collector,
Madurai District,
Madurai.

3. The Asst. Director of Geology and Mining,
Madurai.